IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

RSA.No. 611 of 2007()

AS.27/2001 of DISTRICT COURT, KOTTAYAM
OS.329/1998 of PRL.M.C., KOTTAYAM

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: APPELLANT/APPELLANT/DEFENDANT

K.V.VISWANATHAN, AGED 56 YEARS,
S/O VASUDEVA PANICKER, RESIDING AT
KUNNATHUKALATHIL HOUSE, KUMARAKOM VADAKKUMBHAGOM
KARA, KUMARAKOM VADAKKUMBHAGOM VILLAGE,
KOTTAYAM DISTRICT.

BY ADV. SRI.C.I.ABRAHAM
SRI.JOSEPH A.VADAKKEL
SRI.GEORGE KARITHANAM VARGHESE
SRI.V.J.JOHN
SMT.BINDU ABRAHAM

RESPONDENTS: RESPONDENT/PLAINTIFF

PEETER.J.VALAVI, AGED 36 YEARS,
S/O JOSEPH G.VALAVI, RESIDING AT VALAVI HOUSE,
KURIAN UTHUP NAGAR, PUNNACKKAL KARA,
PANACHIKKAD VILLAGE, KOTTAYAM DISTRICT.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 611 OF 2007

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Dated this the 14th day of August, 2007

JUDGMENT

Defendant in O.S.329/1998 on the file of Munsiff Court, Kottayam is the appellant. Plaintiff is the respondent. Respondent instituted the suit seeking a decree for permanent prohibitory injunction restraining appellant from demolishing the southern wall of the plaint schedule room that separate that room from the southern room owned by K.A.Abraham. The plaint schedule shop room is room No.12 of Ward No.XII. Under Ext.A1 sale deed dated 21.10.1995, respondent purchased the plaint schedule room and thereafter under Ext.A3 rent deed dated 1.11.1995, granted a lease in favour of the appellant who is now occupuing the room as a tenant. The southern room bearing door No.13 of Ward No.XII, was purchased by K.A. Abraham under Ext.B2 sale deed dated 23.9.1997. Thereafter as per Ext.A5 rent deed ated 30.3.1998 he granted a lease

of that room also in favour of the appellant. Appellant obtained the plaint schedule shop room for running the Kunnathukalathil Jewellery. When he attempted to remove the wall separating room No.12 from room No.13, the suit was filed for a perpectual injunction. Appellant resisted the suit contending that respondent is not entitled to institute the suit as he has only a 1/8 share in the property and by removal of wall no damage will be caused to the building and for the proper enjoyment of both the tenanted building, it is necessary that the necessary modification is effected.

2. Learned Munsiff on the evidence of Pws.1 and 2, Exts.A1 to A5 and Ext.C1 granted a decree in favour of the respondent but providing that the decree will not affect the rights of the appellant to make counter, cabin and show cases, as authorised under Ext.A3 rent deed, in the plaint schedule building without causing any structural alteration to the building. Appellant challenged

the decree and judgment before District Court, Kottayam in A.S.27/2001. Learned District Judge on reappreciaiton of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellant was heard.

4. The argument of learned counsel is that by removing the southern wall the identity of the room will not be lost and the modification will not materially affect the entire building and it is necessary for proper enjoyment of the tenanted premises and in such circumstance, the decree is unsustainable.

5. On hearing the learned counsel, I do not find any substantial questions of law involved in the appeal. What was prohibited by the decree granted by the courts below is only the removal of the southern wall which separates the plaint schedule building owned by the respondent and from the southern room owned by another landlord

Abraham. Courts below on the evidence and especially Ext.C1 report found that if the wall which separates the two rooms is to be removed, the identity of the room will be lost. It was also found that the nature of the building is such that the removal of the southern wall would materially affect the entire building. In such circumstance, courts below rightly granted the decree prayed for. Though respondent under Ext.A1 obtained only 1/8 share in the whole property, the building was obtained thereunder and was rented out to appellants. In such circumstances, respondent being the landlord is entitled to institute the suit and the decree. The trial court itself preserved the right to the appellant to effect necessary modifications in the building without causing any structural alteration. In such circumstance, appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006